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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,508	11/28/2000	Glen T. Anderson	680.0037USU	4904

7590 11/05/2002
Charles N.J. Ruggiero, Esq.
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square, 10th Floor
Stamford, CT 06901-2682

EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 11/05/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/723,508		ANDERSON, GLEN T.	
	Examiner		Art Unit	
	Gina C. Yu		1617	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Receipt is acknowledged of Response filed on July 31, 2002. Claims 1-20 are pending. The finality of the claim rejections as indicated in the Office action dated April 29, 2002, is withdrawn in view of the declaration under 37 C.F.R. § 1.131. New rejections are made in view of further consideration.

Claim Objections

Claim 14 is objected to because of the following informalities: the claim does not end with a period. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "about" renders the claims vague and indefinite. See MPEP § 2173.05(b), quoting *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 U.S.P.Q. 2d 1016 (Fed. Cir. 1991). The court in *Amgen* held that the term "at least about" were invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term "about". Similarly, the term "about" is used in this case without reference as to determine what specific range of particle sizes are covered by the term, and prior arts teach cosmetic compositions with

close limitations. See LeFleur et al (US 5658, 579), discussed in Claim Rejections under 35 U.S.C. § 103 below.

Claim 7 is rejected, as there is insufficient antecedent basis for the particle size range of "about 1 micron to about 25 micron". While the term "about" renders the scope of the claims vague, as discussed above, claim 7 as recited may encompass particle size distribution well exceeding 24.

Claim 8 recites the limitation "the particle size range" of "about 5 microns to about 20 microns". There is insufficient antecedent basis for this limitation in the claim, since the particle size distribution there would result in about 15, whereas the base claim, claim 1, specifies the particle size distribution of the composition to be "about 24". Claims 9 and 10 are rejected for analogous reasons.

Remaining claims are rejected as depending on indefinite base claims.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-20 are rejected under 35 U.S.C. § 103(a) as obvious over Rouquet et al. (U.S. Pat. No. 6,258,345 B1) in view of LeFleur (U.S. Pat. No. 5,658,579).

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. Employing each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition, is disclosed in col. 3, lines 46 – 58, which meets

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instant claims 11-13. Nylon or polydimethylsiloxane particles are used, which meets claim 14. See col. 2, lines 37 – 54. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention in claims 18-20 are described in Examples.

Rouqueut fails to teach the particle size distribution of the spherical particles.

LaFleur teaches powder compositions comprising combination of talc having specified particle size distribution. See col. 2, lines 10 – 34. The reference teaches that the talc therein comprises particles having a particle size distribution of 10 microns or less; 15 microns or less; and 20 microns or less. See instant claims 3-5, 9, and 10. The reference teaches that the invention provides improved coverage, uniformity, and natural look, which are attributed by the particle size distribution of talc. See col. 3, lines 1 – 64. As for claim 1 and 7, examiner takes the position that the prior art renders the claimed particle size distribution of 24 obvious. Based on the prior art teaching that a particle size distribution of 20 microns or less renders the said benefits, it would have been obvious to a routineer to discover a workable particle size distribution by routine experimentation.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquer by adding the talc particles having specific particle size distributions as suggested by LeFleur because of the expectation of successfully producing cosmetic compositions that provide improved coverage, uniformity, and natural look to the skin. Nothing nonobvious or unexpected is

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seen in using conventional cosmetic ingredients as suggested by the prior arts for the known purposes.

Conclusion


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
October 31, 2002


SREENI PADMANABHAN
PRIMARY EXAMINER

11/3/02